



HOUSE OF REPRESENTATIVES

SB 1306

county development fees

Prime Sponsor: Senator Griffin, LD 14

DP Committee on Commerce

DP Caucus and COW

X House Engrossed

OVERVIEW

SB 1306 modifies the development fees that counties can charge to offset capital costs.

PROVISIONS

1. Authorizes a county to assess development fees for providing necessary public services to a development including the costs to prepare or revise a development fee.
2. Requires the county to calculate the development fee based on the infrastructure improvements plan (Plan).
3. States that based on service units, development fees must reflect a proportionate share of the cost to provide necessary public services to the development.
4. Stipulates that the costs for new developments must be based on the same level of service for existing developments in the service area at the time of the adopted infrastructure improvement plan.
5. Prohibits the use of development fees for:
 - a. Funding a level of service higher than the existing development when the Plan is adopted.
 - b. Construction, acquisition or expansion of facilities or assets except as listed in the Plan.
 - c. Repair, operation or maintenance of new or existing services or facilities.
 - d. Updating, expanding, replacing or correcting existing public services that serve or create a higher standard to existing development or to meet stricter safety, regulatory or environmental standards.
 - e. Paying county administrative or maintenance and operations costs.
6. Outlines the entitlements when development fees are paid, including the immediate service from an existing facility that has the available capacity to serve the new homes, if not already reserved for new construction or financing the facility.
7. Permits counties to collect development fees as follows:
 - a. To pay for necessary public service or facility expansion identified in the Plan and when the county completes construction and the service is available within the stated time period.
 - b. To reserve capacity for future development or according to the adopted Plan.
 - c. The owner of a development constructs or finances the necessary public service or facility expansion and any of the following applies:

1. The costs or monies advanced are credited against or reimbursed from the development fees otherwise due and the credits must equal the costs associated with the construction of the services.
2. The county reimburses the owner for the development fees paid from all developments that will use the public service or facility expansions.
3. In both cases, requires the county to allow the owner to assign reimbursement rights to other developments for the same category of public services in the same service area.
8. Permits finance charges to be included in the formula for determining the development fees only if the monies are used for paying principal and interest on bonds issued to finance construction of public services or facility expansion in the Plan.
9. Provides clarifying language regarding the development fees and the actual assessed costs.
10. Outlines the process for reimbursing the developer, rather than providing a credit toward the payment of development fees.
11. Specifies the timeliness for paying the development fees later than at the time the construction permits are issued. Outlines requirements for deferred development fees, which must be paid no later than 15 days after a certificate of occupancy is issued. Requires the development agreement to include appropriate security for deferment, including a surety bond, letter of credit or cash bond.
12. Requires the county to amend the Plan to include any facilities that were not previously adopted, but were a condition of development approval for the construction, improvement, contribution to or dedication of any facilities. Credits any development fees for such construction or improvement to the extent that the facilities will either reduce the need or substitute for facilities for which development fees were already assessed.
13. Directs the county to issue a credit toward any development fees identified in a Plan that requires a set-aside for open space for public park facilities or their expansion and permits reimbursement as outlined.
14. Requires the county to forecast the future contribution in cash, taxes, fees, assessments and all other sources of revenue derived from the property owner towards capital costs of the necessary public services covered by development fees.
15. States that if county development fees are assessed for residential development, they must also be assessed for commercial and industrial development. Permits the county to distinguish between the various developments, but prohibits any assessment made on the basis of home size or number of bedrooms.
16. Requires reimbursement to the development fees account for any fees the county agrees to waive.
17. Stipulates that any development fee waivers must be reported to the Advisory Committee.
18. Requires the written report of the Plan to be posted on the county's website.
19. Decreases the time in which to hold the public hearing, from 120 days after the notice of intention to assess development fees and at least 14 days before the scheduled date of adoption, to 30 days for each timeframe. The county must approve or disapprove imposing the development fees within 60 days after the public hearing.

20. Prohibits a county from adopting an ordinance, order or resolution to approve development fees as an emergency measure.
21. Prescribes the duty of the board of supervisors to adopt or update the Plan and the land use assumptions for the designated area before the county can adopt or amend its development fees or change the service area. Outlines the requirements for the public hearing, notice and posting of pertinent information on the county's website. Specifies timeframes for the county to approve or disapprove the Plan and land use assumptions. Prohibits adopting an emergency measure to approve the Plan or land use assumptions.
22. Requires the Plan to be developed by qualified professionals using generally accepted engineering and planning practices.
23. Mandates a five-year update for each Plan and county land use assumptions, and states that the initial period begins on the day the Plan is adopted. The county must review and evaluate its current land use assumptions and update their Plan accordingly.
24. Outlines the requirements for the county with regard to updating the Plan and land use assumptions, specifies timeframes and public notice and specifies alternatives to updating the Plan.
25. Details the requirements to amend a Plan without a public hearing, if the amendments only address necessary public services in the existing Plan. The changes will not increase the level of service in the area or cause an increase in development fees that is more than 5% when new or modified fees are assessed. The county must post notice of the amendment on the county's website at least 30 days before adoption and provide notice to the Advisory Committee.
26. States that for each necessary public service, the Plan must include all detailed items.
27. Stipulates that a county's Plan may identify expanded services that the county will construct beyond the noted time period and may not include those costs in the calculation of development fees.
28. Requires the county's development fees ordinance to provide:
 - a. New development fees or increased fees cannot be assessed against a development for 24 months after the date the county issues the final approval for a commercial, industrial or multifamily development or the date that the first residential building permit is issued for a residential development as outlined. Requires the county to issue a written statement of the fee schedule for the development, upon request. If the county reduces the development fees after its final approval, the reduction applies to the entire development.
 - b. A process for requesting an alternative development fee calculation as outlined.
29. Requires a county to do one of the following before adopting proposed or updated land use assumptions, development fees or Plan:
 - a. Appoint an *Infrastructure Improvements Advisory Committee*, consisting of five members appointed by the board of supervisors, with a minimum 50% representative of the real estate, development or home building industry. Members may not be county employees or officials, and at least one member must represent the home builders. Outlines duties and responsibilities while serving in an advisory capacity.
 - b. Provide for a biennial certified audit of the land use assumptions, development fees and Plan, conducted by qualified disinterested professionals who are not county employees or

officials. Outlines the audit review and evaluation. The county must post the audit on its website and conduct a public hearing within 60 days after its release to the public.

30. States that on written request, a real property owner for which development fees were paid after January 1, 2021, is entitled to a refund if:
 - a. Existing facilities are available and service is not provided.
 - b. The county, after collecting the fees to construct a facility when service is not available has failed to complete construction within the time period identified in the Plan, but in no event later than the 10-year period.
 - c. Any part of the development fee is not spent as authorized by statute within 10 years, or for water and wastewater facilities, any part of the development fee is not spent as authorized within 15 years after the development fees have been paid.
31. Authorizes a refund of the development fees to the current owner, for the difference between the forecast cost and the actual cost of the construction of infrastructure, if greater than 10%
32. States that a refund includes any interest earned by the county from the date of the development fee collection to the date of the refund.
33. Allows development fees adopted before January 1, 2017, to continue to be collected for the purpose of providing a public service. Replaces the requirements for development fees with provisions outlined in this bill by January 1, 2021.
34. Outlines the uses of the development fees remaining in an account after January 1, 2017.
35. Prohibits a moratorium from being placed on development solely to adopt, update or develop the requirements for development fees.
36. Directs the courts to narrowly construe the powers of the county while interpreting the provisions of this legislation to ensure that new residents do not bear the burden that all county taxpayers should bear.
37. Requires the county's annual report on development fees to include the repayment amount for any debt service obligations on each facility, including any expansion to projects, the total amount advanced by the county, the source of monies and terms of repayment. The report must be posted on the county's website.
38. Changes the term *capital improvement project* to *necessary public service*.
39. Specifies a two year time period for any action to collect development fees.
40. Grandfathers existing development fee assessments that were adopted for facilities financed before June 1, 2016, as outlined.
41. States that through January 1, 2018, development fees adopted before January 1, 2017 may be used to finance construction of a facility and may be used to repay debt service obligations of *necessary public service* as noted.
42. Defines pertinent terms.
43. Makes technical and conforming changes.

CURRENT LAW

A.R.S. § 11-1102 stipulates that a county with a capital improvements plan can charge development fees to offset capital costs for water, sewer, streets, parks and public facilities

determined by the Plan to be necessary for public services provided by the county to the development in the planning area. Statute subjects the development fees to the following:

1. Must be of beneficial use to the development and assessed in a nondiscriminatory way.
2. Fund monies must be placed in a separate account and used only for the stated purposes authorized by development fees.
3. The county provides a credit toward the fee for public sites and improvements provided by the developer for the fee that is assessed. The developer of residential dwelling units (Homes) is required to pay the fees when construction permits for the Homes are issued.
4. The development fees must correlate to the burden of capital costs for additional necessary public services to the development. The county must consider the current and future contributions for taxes, fees or assessments by the property owner when determining the extent of the burden.
5. In determining a development fee for land in a *community facilities district* the county must consider all public infrastructure and capital costs paid by the district for necessary public services and cannot assess a portion of the development fee based on the infrastructure or costs. Also, the county cannot collect development fees from a school district or charter school, other than fees assessed for streets, water and sewer utility functions.
6. The county must do all of the following before assessing or increasing a development fee:
 - a. Give at least 120 days' advance notice of intention to assess a new or increased development fee.
 - b. Provide a public report with documentation to support the new or increased fee.
 - c. Hold a public hearing on the issue after the expiration of the 120 days.

Statute permits a development fee to be effective 90 days after formal adoption by the board of supervisors and requires counties to submit an annual report of the collection and use of the fees. Furthermore, counties must make the reports available to the public, submit a copy to the board of supervisors and cannot continue to collect development fees until the report is filed.